In The

SUPREME COURT OF THE UNITED STATES

October Term, 1940 Number 396

ROBERT F. BUGGS,
Petitioner,

vs.

FORD MOTOR COMPANY, a Foreign Corporation,
Respondent.

PETITIONER'S REPLY BRIEF
in Support of Petition for Writ of Certiorari.

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INDEX, SUMMARY OF ARGUMENT and LIST OF AUTHORITIES CITED.

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I.

Reply to Respondent's "Statement of Case."

Under the above heading the respondent states as facts that the petitioner's "franchise" consisted merely of the Sales Agreement dated May 26, 1932 (R. pp. 41-46). Respondent further contends that that was one of the "undisputed" facts found by the District Court. From that premise the respondent argues that petitioner (plaintiff below) has no cause of action regardless of whether the decision of the Circuit Court of Appeals on the validity of the Sales Agreement is right or wrong.

It is not our purpose to argue the merits of this case. But we wish to point out briefly that respondent's premise is not warranted by the record.

The record clearly shows that this case was disposed of by the District Court on a motion for summary judgment. There were no evidence or "facts" presented to the trial court. True, there were affidavits but they dealt solely with the defendant's prayer for injunctional relief against plaintiff (petitioner) maintaining Ford signs. No appeal was taken from that part of the Judgment and Decree. On the question now on appeal—the right of the petitioner (plaintiff) to a jury trial for wrongful cancellation of his franchise—the record shows that all that the District Court had before it was the plaintiff's complaint, defendant's answer and plaintiff's reply. On these bare pleadings the court below made the elaborate "Findings of Fact, Conclusions of Law and Judgment and Decree," with which the respondent (defendant below) now seeks to foreclose this court from passing on the questions of law presented by the record.

In reply we wish to point out (1) that plaintiff assigned all such "Findings of Fact," "Conclusions of Law" and "Judgment and Decree" as error on appeal to the Circuit Court of Appeals (R. pp. 108-110). The record, therefore, speaks for itself and shows that these "undisputed facts" are disputed and (2) what interpretation should be given to the pleadings is a question of law. It is not the proper subject matter for "Findings of Fact."

To illustrate, the District Court found as "Facts:"

> "The agreement and not the statute controlled the rights of the parties. The statute has no application to said agreement. The defendant lawfully had the right to terminate the agreement, at will and without cause, and lawfully terminated the same, and no cause of action for damages arises in favor

of the plaintiff by reason of such termination, either under said agreement or said statute or otherwise. *The statute does not create a cause of action for damages for any alleged violation thereof''* (italics ours) (R. p. 100).

Obviously, all such matters are questions of law. Whether the statute controls the rights of the parties, or the defendant may as a matter of right terminate the relations of the parties without cause, or whether violation of the statute creates a cause of action for damages or not are questions of law.

In fact the District Court promptly contradicted itself because under ''Conclusions of Law,'' we find:

''9. By terminating the said agreement the defendant did not violate the said statute.

10. The said statute creates no cause of action for damages for any violation thereof'' (R. p. 103).

In *National Surety Corporation of New York vs. Ellison,* 88 F. (2d) 399, at page 402 the Court states:

''It is true, of course, that a summary judgment on the pleadings is precluded where an issue of fact is raised, * * * *and that the judgment must be sustained by undisputed facts appearing in the pleadings''* (italics ours).

From this analysis it is apparent that the so-called ''undisputed facts'' are quetsions of law for this Court to decide if the case is heard on its merits.

The respondent contends, in effect, that the relations between the parties is confined solely to the ''Sales Agreement'' of May 26, 1932. This contention appears to be based on a quibble over the word ''franchise'' and an allegation in paragraph 4 of plaintiff's complaint: ''the last said franchise held by this plaintiff bears date May

26, 1932." The respondent would, therefore, have the Court to ignore paragraphs five to twenty-two inclusive of the complaint (R. pp. 13-17). Regardless of what nomenclature is used, the complaint in substance describes the relations of the parties over a period of twenty-five years, the efforts, time and cost to the plaintiff in building up the business in Rock County, Wisconsin. Paragraph 14 (R. p. 15) alleges that plaintiff had invested the sum of One Hundred Thousand Dollars ($100,000.00) at the defendant's insistence and request in building up, promoting and maintaining the business. The complaint in substance alleges that it was this business which was destroyed by the defendant's wrongful and malicious violation of the Statute (Sec. 218.01 Wisconsin Statutes). Under a fair and liberal interpretation of the complaint, it is apparent that the allegations are not confined to just one transaction between the parties. This action was commenced in the Circuit Court of Rock County, Wisconsin, and the complaint is therefore entitled to be interpreted according to the laws of Wisconsin. Section 263.27 Wisconsin Statutes reads:

> "In the construction of a pleading for the purpose of determining its effect its allegations shall be liberally construed, with a view to substantial justice between the parties."

Rule 8 (f) of the Federal Rules of Civil Procedure reads:

> "All pleadings shall be so construed as to do substantial justice."

In paragraph 5 of his reply (R. p. 50) the plaintiff alleged:

> "5. The plaintiff denies that pursuant to the purported sales agreement of May 26, 1932, that he held himself out as an authorized Ford dealer, but alleges that on the contrary that he has been possessed of

a franchise as an authorized Ford dealer and an authorized Ford Service Station ever since the 13th day of October, 1913, in the manner and form in which he has alleged in paragraphs 4 to 14 inclusive of his complaint on file in this cause which allegations he incorporates in his reply by reference as if fully stated herein. * * *'' (R. p. 50).

Furthermore respondent's answer (R. p. 47) shows three written agreements with petitioner subsequent to May 26, 1932; namely, December 12, 1935, May 1, 1937 and October 20, 1936. The fallacy in respondent's contention is that it assumes that petitioner is suing for breach of the Sales Agreement. Such is not the case. Petitioner is suing in tort for violation of the Statute. We submit that petitioner's cause of action is not confined to the matters contained in the Sales Agreement of May 26, 1932.

II.

Reply to Respondent's contention that case at bar is not in conflict with the decision of the Circuit Court of Appeals for Fourth Circuit, in the case of Ford Motor Company vs. Kirkmyer Motor Company, 65 Fed. (2d) 1001.

Counsel argues that the written agreement involved in the *Kirkmyer* case is distinguishable from the Sales Agreement in the case at bar. When the case at bar was before the Circuit Court of Appeals for the Seventh Circuit, respondent stated on page 19 of its brief:

> "In *Ford Motor Company vs. Kirkmyer Motor Co.*, 65 Fed. 1001, the court says with reference to a Ford Dealer's contract, apparently similar to the one in question, * * *''

and on page 10, respondent stated:

> "The contract (Sales Agreement) was a binding contract; * * * *Ford Motor Co. vs. Kirkmyer Motor Co.*, 65 Fed. (2d) 1001;''

III.

Reply to Respondent's Argument that the Sales Agreement of May 26, 1932 (R. pp. 41-46), is a valid contract.

On pages 8-10 of its brief respondent contends that the Sales Agreement contained mutuality because the petitioner was given the right to hold himself out as a Ford dealer and display Ford signs.

A careful reading of the Sales Agreement (R. pp. 41-46) will demonstrate that no such rights were conferred on the petitioner by that document.

IV.

Other Matters Involved.

In reply to respondent's argument pages 11-14 of its brief that the decision below is not in conflict with local law or local decisions, we are content with the argument submitted in our principal brief.

As to respondent's argument on page 10 of its brief that petitioner has no cause of action for damages, it is our understanding of the rules that this is not the proper place nor time for the argument of such matters.

Likewise as to respondent's argument on page 15 of its brief as to the constitutionality of the Wisconsin Statute, we deem it unnecessary to argue that matter at this time.

For the above reasons, the writ of certiorari prayed for should be granted.

Respectfully submitted,

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